

# Staff Report 04

Consider Waiver of Rent, Penalty, and Interest and Termination and Issuance of a General Lease – Recreational Use

## **LESSEE:**

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Frank Casale and Teresa M. Casale

## **APPLICANT:**

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Daniel S. Haas, as Trustee of the Daniel S. Haas Trust dated December 21, 2004

## **PROPOSED ACTION:**

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Termination and Issuance of a General Lease – Recreational Use; Waiver of Rent, Penalty, and Interest.

## **AREA, LAND TYPE, AND LOCATION:**

Sovereign land in Lake Tahoe, adjacent to 720 West Lake Boulevard, near Tahoe City, Placer County.

## **AUTHORIZED USE:**

Continued use and maintenance of two existing mooring buoys.

## **TERM:**

10 years, beginning August 20, 2020.

## **CONSIDERATION:**

\$754 per year, with an annual Consumer Price Index adjustment.

## **SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing, and lake-related recreation.

- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

## **STAFF ANALYSIS AND RECOMMENDATION:**

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### **AUTHORITY:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On October 13, 2016, the Commission authorized a General Lease - Recreational Use for two existing mooring buoys to Frank Casale and Teresa M. Casale ([Item C06, October 13, 2016](#)). That lease will expire on November 30, 2025.

On January 10, 2018, upland ownership was transferred to Daniel S. Haas, as Trustee of the Daniel S. Haas Trust dated December 21, 2004. The Applicant is now applying for a General Lease – Recreational Use for the continued use and maintenance of the two existing mooring buoys. A pier extends from the upland parcel into the lake, as shown on Exhibit B, but does not extend below elevation 6223 feet, Lake Tahoe Datum, into the Commission's leasing jurisdiction. Therefore, a lease for the pier is not required at this time.

Staff recommends termination of the existing lease because the Lessee abandoned the lease, sold the upland property without notifying staff, failed to execute a lease quitclaim, and defaulted on lease payments. The Lessee paid rent through November 30, 2018 but did not pay invoice numbers 46005 or 48681 for the period of December 1, 2018, through November 30, 2020. The Applicant agreed to pay compensation for the unauthorized occupation of State land from December 1, 2018, through August 19, 2020, the day before the August Commission meeting when staff recommends the new lease begin. Staff believes it is not in the State's best interests to pursue the unpaid rent, penalty, and interest from the Lessee since the Applicant was the upland owner as of January 10, 2018. Staff further recommends the Commission accept compensation from the Applicant in the amount of \$1,297 for the period of non-payment prior to the commencement of the proposed lease.

The Applicant owns the upland adjoining the lease premises. The subject facilities are privately owned and maintained, used for the docking and mooring of boats and facilitate recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The pier and mooring buoys have existed for many years at this location. The pier, although not within the Commission's leasing jurisdiction, exists within the Public Trust easement. The pier is built on pilings, providing public access for pedestrians and for lake-related activities at varying water levels underneath the pier. The public can walk around the pier within the Public Trust easement. The immediate area of the existing pier is gently sloped with sand and pebbles. The two mooring buoys are located directly lakeward of the upland property and occupy a relatively small area of the lake. On September 18, 2009, TRPA issued a permit for the buoys (MOOR2009-2461). The Applicant registered the buoys with TRPA on March 26, 2019 (No. 10135).

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; is consistent with the common law Public Trust Doctrine; and is in the best interests of the State.

## **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the two existing mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.

3. On October 24, 2018, the TRPA Governing Board certified a Final Environmental Impact Statement and adopted Lake Tahoe Shorezone Ordinance Amendments.
4. Termination of the lease is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.
5. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 290.

## **EXHIBITS:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

Find that issuance of the lease is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the termination of a lease; waiver of rent, penalty, and interest; and issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

1. Waive annual rent, penalty, and interest due for the period of December 1, 2018, through November 30, 2020, and void annual rent invoice numbers 46005 and 48681 issued to Frank Casale and Teresa M. Casale.
2. Authorize termination, effective January 9, 2018, of Lease Number PRC 8643.1, a General Lease – Recreational Use, issued to Frank Casale and Teresa M. Casale.
3. Authorize acceptance of compensation from the Applicant in the amount of \$1,297 for the unauthorized occupation of State land for the period beginning December 1, 2018, through August 19, 2020.
4. Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 20, 2020, for a term of 10 years for the continued use and maintenance of two existing mooring buoys, as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$754, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

## EXHIBIT A

LEASE 8643

### LAND DESCRIPTION

Two parcels of submerged land situate in the bed of Lake Tahoe, lying adjacent to Lot 5 of fractional Section 7 Township 15 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 9, 1866, County of Placer, State of California, and more particularly described as follows:

Two circular parcels of land, each being 50 feet in diameter, underlying two existing buoys lying adjacent to those parcels described in that Grant Deed recorded January 10, 2018 as Document Number 2018-0001148 in Official Records of said County.

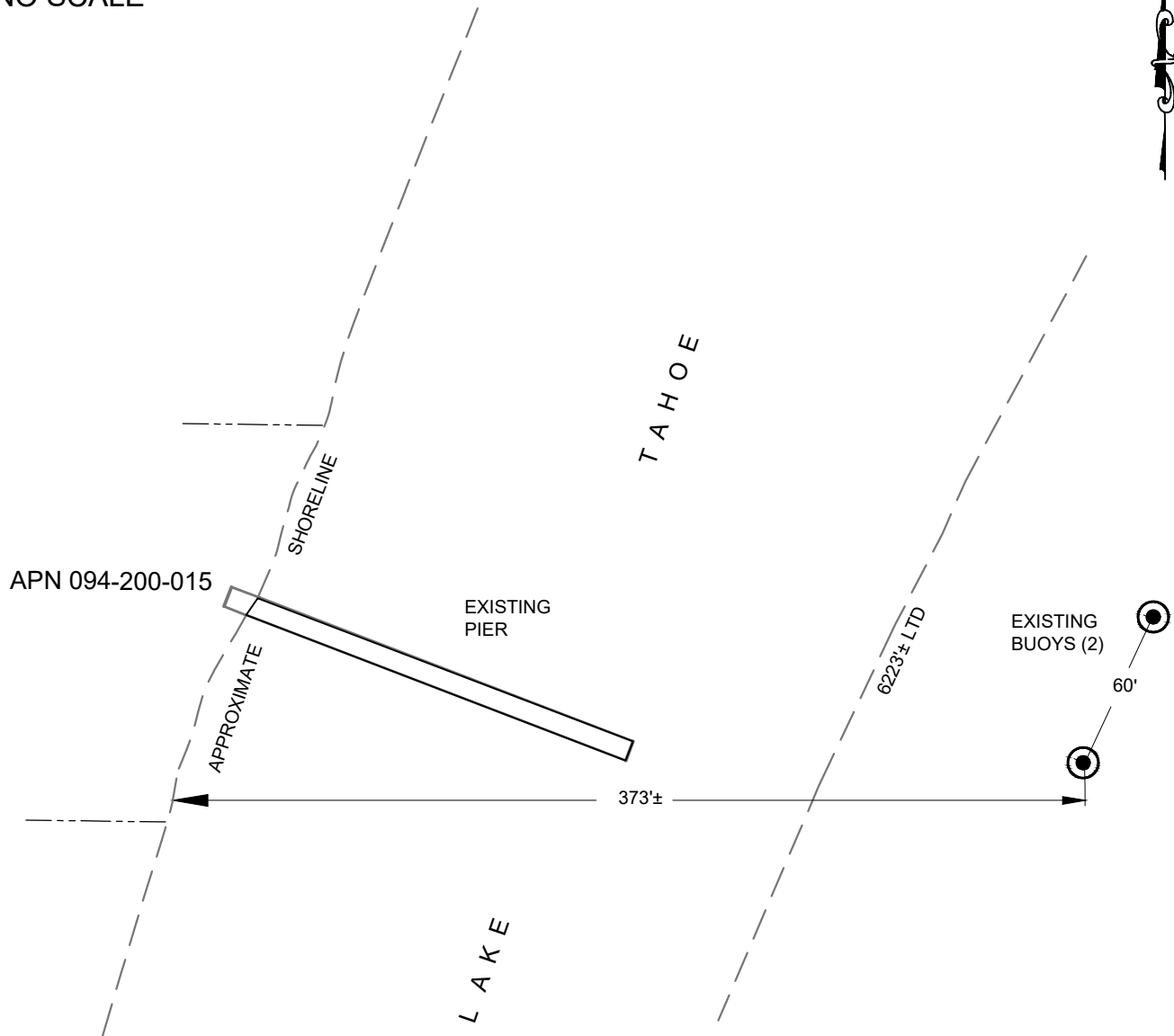
Accompanying plat is hereby made part of this description.

### END OF DESCRIPTION

Prepared August 30, 2019 by The California State Lands Commission Boundary Unit.



NO SCALE



## EXHIBIT A

Page 2 of 2

MJJ 9/17/2019

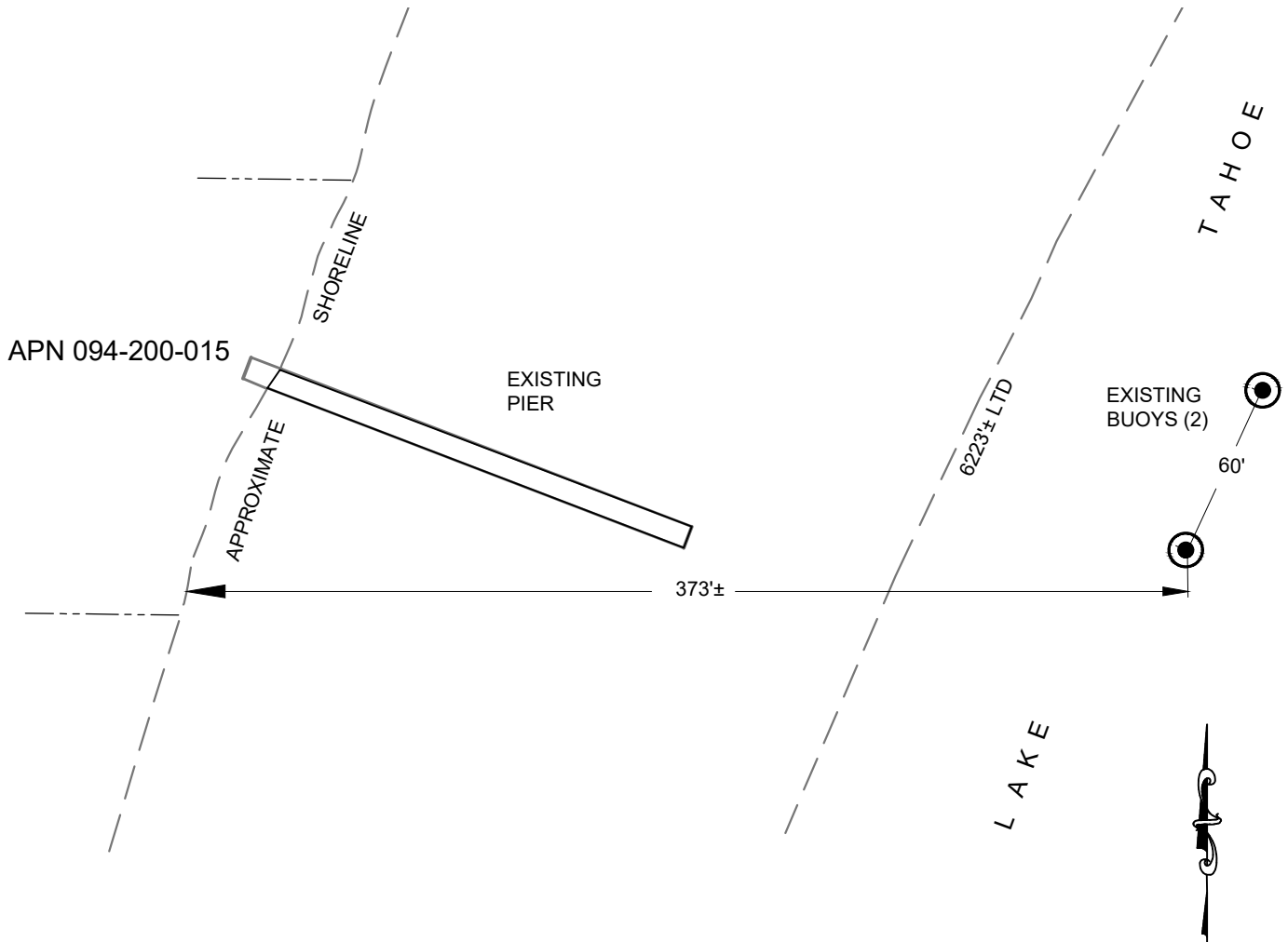
LAND DESCRIPTION PLAT  
LEASE 8643, HAAS TRUST  
PLACER COUNTY

CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

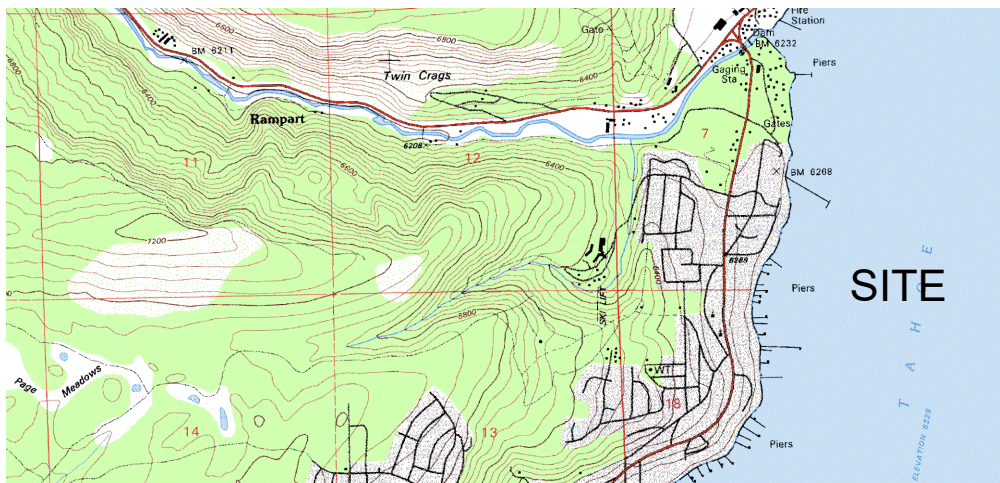
## SITE



720 WEST LAKE BLVD., NEAR TAHOE CITY

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

## **Exhibit B**

LEASE 8643  
HAAS TRUST  
APN 094-200-015  
GENERAL LEASE -  
RECREATIONAL USE  
PLACER COUNTY



MJJ 9/17/2019